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Dr. Ing. Giok Djien Go
Pfahlgrabenstr.45
D-65510 Idstein, Germany

In re Application of
GO
Application No.: 09/554,464
PCT No.: PCT/DE98/03271
Filing Date: 10 November 1998
Priority Date: 11 November 1997
For: RETAINER DEVICE WITH SHOULDER
ARRESTER FOR TRANSPORT SYSTEMS

COMMUNICATION

This application is before the PCT Legal Office for consideration of issues arising under 35 U.S.C. 371 and in response to communications from applicant received on 20 April 2000 and letter dated 14 March 2002.

BACKGROUND

On 10 November 1998, applicant filed international application PCT/DE98/03271, which claimed priority of an earlier German application filed 11 November 1997. A copy of the international application was transmitted to the United States Patent and Trademark Office (USPTO) by the International Bureau (IB) upon publication of the international application on 20 May 1999. A Demand for international preliminary examination was filed on 10 June 1999 which elected the United States. Accordingly, the thirty month period for paying the basic national fee in the United States expired at midnight on 11 May 2000.

On 19 April 2000, applicant filed a transmittal letter to the United States concerning a filing under 35 U.S.C. 371 (Form PTO-1390) which was accompanied by, *inter alia*, a small entity statement and purported translation, and Article 19 amendments and purported translations thereof.

The purported translation indicated the following : "This is a continuation-in-part application of co-pending international application number PCT/DE98/03271 (WO 99/24292) filed Nov. 10, 1998 and claiming the priority of DE 197 58 498 A1 filed Nov. 11, 1997 is revised and refiled." Fees of \$866 were submitted. The case was assigned U.S. serial no. 09/554,464

On 19 February 2002, a Notice of Insufficient Basic National Fee Required Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/904) was erroneously mailed to applicant indicating that the basic national fee of \$840 was required and that a small entity statement had not been received.

On 14 March 2002, applicant filed a communication in response to the Notice of Insufficient Fees, indicating that a small entity statement and fees totaling \$2000 was previously sent.

DISCUSSION

As explained at Section 1893.03(a) of the Manual of Patent Examining Procedure (MPEP), any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

On 19 April 2000, applicant filed a transmittal letter to the United States concerning a filing under 35 U.S.C. 371 (Form PTO-1390) and the basic national fee for entry into the national stage in the USPTO. The assertion of continuation status is made in the copy of the specification submitted on 19 April 2000, which amends the specification with the insertion "This is a continuation-in-part application of co-pending international application number PCT/DE98/03271 (WO 99/24292) filed Nov. 10, 1998 and claiming the priority of DE 197 58 498 A1 filed Nov. 11, 1997 is revised and refiled." Applicant's reference to the papers as a continuation application at the top of the first page of his specification is inconsistent with the submission of items concerning 35 U.S.C. 371 and payment of the basic national fee filed 19 April 2000 to file under 35 U.S.C. 371 and contradicts the request in the 19 April 2000 transmittal letter to file under 35 U.S.C. 371.

In view of the above noted conflicting instructions, the papers are considered as having been filed under 35 U.S.C. 111(a).

Since the papers filed on 19 April 2000 are considered a U.S. application under 35 U.S.C. 111(a) as a continuation of PCT/DE98/03271, the 19 February 2002 Notice of Insufficient Basic National Fee Required Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/904) is hereby vacated.

CONCLUSION

This application is accepted as an application filed under 35 U.S.C. 111(a) with a filing date of 19 April 2000.

The Notice of Insufficient Basic National Fee Required Under 35 U.S.C. 371 and 37 CFR

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1.494 or 1.495 (Form PCT/DO/EO/904) mailed on 19 February 2002 is VACATED.

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for removal of the Article 20 papers communicated from the International Bureau to the United States of America.

The application will then be forwarded to the Office of Initial Patent Examination (OIPE) for further processing as a national application filed under 35 U.S.C. 111(a) with a filing date of 19 April 2000.



Leonard E. Smith
Legal Examiner
PCT Legal Office

CMK/LES:cmk



Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: 703-306-5467
Facsimile: 703-308-6459